
(2011) 01 AHC CK 0246
In the Allahabad High Court
Case No : Trade Tax Revision No. 1003 of 2003

The Commissioner, Trade Tax, U.P.

APPELLANT

Vs

S/S Khemka Paper Traders

RESPONDENT

Date of Decision : 11-01-2011

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(1), 21(2), 21(3), 22

Citation : (2011) 39 VST 466

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Heard Sri K.M. Sahai, Standing Counsel and Sri V.K. Agarwal appearing on behalf of the Respondent-Assessee (hereinafter referred as the "Assessee").

2. By means of the present revision the order of the Tribunal dated 12.6.2003 for the assessment year 1990-91 has been challenged. The proceeding u/s 21 of the U.P. Trade Tax Act (called the "Act" for short) has been initiated. The notice u/s 21 of the Act has been admittedly served within a period of eight years from the expiry of the financial year. There is no dispute in this regard. Learned Standing Counsel produced the record which shows that the notice has been served on 26.3.1999. The assessment order, however, has been passed on 30.9.1999 after expiry of eight years. The Tribunal has set aside the assessment order on the ground that it was passed beyond the period of eight years and, therefore, it was barred by limitation. Tribunal has held that u/s 21(2) of the Act the assessment order should have been passed within a period of eight years.

3. Learned Standing Counsel submitted that the Tribunal failed to look into Sub-section (3) of Section 21 of the Act which provides that if the notice is served within the period provided under Sub-section (2) of Section 21 of the Act the assessment order may be made within six months after expiration of such

period. Therefore, the order passed on 30.9.1999 was within time. I find substance in the argument of learned Standing Counsel.

4. Sections 21(1), 21(2) and 21(3) reads as follows:

Section 21. Assessment of tax on the turnover not assessed during the year.

(1) If the assessing authority has reason to believe that the whole or any part of the turnover of the dealer, for any assessment year or part thereof, has escaped assessment to tax or has been under assessed or has been assessed to tax at a rate lower than that at which it is assessable under this Act, or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer or tax according to law:

Provided that the tax shall be charged at the rate at which it would have been charged had the turnover not escaped assessment, or full assessment as the case may be.

Explanation 1:

Nothing in this sub-section shall be deemed to prevent the assessing authority from making an assessment to the best of its judgment.

Explanation II:

For the purposes of this section and of Section 22, "assessing authority" means the officer or authority who passed the earlier assessment order, if any, and includes the officer or authority having jurisdiction for the time being to assess the dealer.

Explanation III:

Notwithstanding the issuance of notice under this Sub-section, where an order of assessment or re-assessment is in existence from before the issuance of such notice it shall continue to be effective as such, until varied by any order of assessment or re-assessment made under this section in pursuance of such notice.

(2) Except as otherwise provided in this section, no order of assessment or re-assessment under any provision of this Act for any assessment year shall be made after the expiration of two years from the end of such year or March 31, 1998, whichever is later:

Provided that if the Commissioner on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do authorises the assessing authority in that behalf, such assessment or re-assessment may be made after the expiration of the period aforesaid but not after the expiration of six years from the end of such year or March 31, 2002,

whichever is later notwithstanding that such assessment or re-assessment may involve a change of opinion:

Provided that if the Commissioner on his own or on the basis of reasons recorded by the assessing authority, is satisfied that it is just and expedient so to do authorises the assessing authority in that behalf, such assessment or re-assessment may be made after the expiration of the period aforesaid but not after the expiration of six years from the end of such year or March 31, 2002, whichever is later notwithstanding that such assessment or re-assessment may involve a change of opinion:

Provided further that the assessment or re-assessment for the assessment year 1987-88 may be made by March 31, 1993:

Provided also that if the eligibility certificate granted u/s 4-A has been amended or cancelled by the Commissioner under Sub-section (3) of Section 4-A, the order of assessment or re-assessment may be made within one year from the date of receipt by the assessing authority of the copy of the order amending or cancelling the aforesaid certificate or by March 31, 1995, whichever is later:

Provided also that the assessment or re-assessment for the assessment year 1989-90 may be made by March 31, 1995.

(3) Where the notice under Sub-section (1) or any assessment year has been served within the period specified in Sub-section (2), the order of assessment or re-assessment in pursuance thereof may be made within six months, after the expiration of such period.

5. Section 21(2) of the Act says that except as otherwise provided in this section, no order of assessment or re-assessment be passed after the expiry of two years from the end of such assessment year and further the proviso provided that the Commissioner may authorise the assessing authority to make such assessment or re-assessment after the expiration of two years but not after the expiration of six years from the end of such year. Therefore, Sub-section (2) provides limitation for eight years for passing the order. Sub-section (2) is subject to the other provision of the section. It is subject to Sub-section (3) which provides that if the notice is served within the period specified in Sub-section (2) the assessment may be made within six months after the expiration of such period. In this way Sub-section (3) extends six months further period for passing the order.

6. In view of the above, the order of the Tribunal is erroneous and liable to be set aside. Thus, the Tribunal is required to decide the appeal on merit.

7. In the result the revision is allowed. The order of the Tribunal dated 12.6.2003 in Appeal No. 712 of 2000 for the assessment year 1990-91 is set aside and the matter is remanded back to the Tribunal to decide the appeal of the Assessee on merit.